

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARC S. KIRSCHNER, As Trustee of the  
Refco Private Actions Trust,

Plaintiff,

-against-

PHILLIP R. BENNETT, SANTO C.  
MAGGIO, ROBERT C. TROSTEN, MAYER  
BROWN, LLP, MAYER BROWN  
INTERNATIONAL, LLP, and GRANT  
THORNTON LLP,

Defendants.

ELECTRONICALLY FILED

07 MDL 1902 (JSR)

07 Civ. 8165 (JSR)

**TRUSTEE'S RESPONSE TO THE NON-PARTY SPHINX PLAINTIFFS'  
NON-SUBSTANTIVE OBJECTION TO THE REPORT AND  
RECOMMENDATION OF THE SPECIAL MASTER ON GRANT THORNTON'S  
"DERIVATIVE INJURY" MOTION TO DISMISS**

On February 14, 2011, Special Master Daniel J. Capra issued a Report and Recommendation (“R&R”) denying defendant Grant Thornton LLP’s “derivative injury” motion to dismiss the Refco Private Actions Trustee’s (“Trustee”) claim for aiding and abetting fraudulent inducement in the above captioned case, No. 07 Civ. 8165 (the “Private Actions Trust Case”). The R&R correctly rejected Grant Thornton’s argument that the foreign-exchange customers whose claims have been assigned to the Trustee (the “FX Customers”) suffered only a derivative injury. Neither Grant Thornton nor any other party to the Private Actions Trust Case filed an objection to the R&R.

On February 24, 2011, Kenneth Kryz and Margot MacInnis, as Joint Official Liquidators of the SPhinX Funds and as assignees of the claims of certain SPhinX investors, and the Harbour Trust Company Limited, as Trustee of the SPhinX Trust, (collectively the “SPhinX Plaintiffs”) purported to file an objection (the “SPhinX Objection”) to the R&R’s characterization of certain allegations in the SPhinX Plaintiffs’ complaints. The SPhinX Plaintiffs, however, are *not* parties in the Private Actions Trust Case in which the R&R was issued and did not, and could not, participate in the proceedings before the Special Master giving rise to the R&R. Indeed, the SPhinX Plaintiffs are plaintiffs in an entirely separate and distinct action captioned *Kryz v. Sugrue*, Nos. 08 Civ. 3065, 08 Civ. 3086. Accordingly, the SPhinX Plaintiffs lacked standing or any alternative basis upon which to file an objection to the R&R.

In any event, the SPhinX Objection does not contend that the R&R’s conclusion that the FX Customers’ injuries are direct, not derivative, should be set aside. Instead, the SPhinX Objection solely concerns the R&R’s characterization of certain allegations in the SPhinX Plaintiffs’ complaints. As the R&R’s discussion of these allegations has no bearing whatsoever on the R&R’s conclusion that the FX Customers’ injuries are direct, not derivative, the Trustee

takes no position on the substance of the SPhinX Objection. The Trustee, instead, respectfully requests that the Court adopt the R&R since no party to the Private Actions Trust Case has filed an objection and the SPhinX Objection, even if the Court were to consider it, has no bearing on the substance of the R&R.

DATED: March 7, 2011

QUINN EMANUEL URQUHART &  
SULLIVAN LLP

By: s/ Richard I. Werder, Jr.

Richard I. Werder, Jr.

Sascha N. Rand

William B. Adams

rickwerder@quinnemanuel.com

sascharand@quinnemanuel.com

williamadams@quinnemanuel.com

51 Madison Avenue, 22nd Flr.  
New York, New York 10010-1601  
(212) 849-7000

*Attorneys for Plaintiff Marc S. Kirschner, as  
Trustee for the Refco Private Actions Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served on all parties registered with the Court's CM/ECF system, under docket number 07-CV-8165 (GEL), the following: Trustee's Response To The Non-Party SPhinX Plaintiffs' Non-Substantive Objection To The Report And Recommendation Of The Special Master On Grant Thornton's "Derivative Injury" Motion To Dismiss. The foregoing document was served on counsel of record via the Court's CM/ECF system.

Dated: March 7, 2011  
New York, New York

By: /s/ Richard I. Werder, Jr.  
Richard I. Werder, Jr.  
Quinn Emanuel Urquhart & Sullivan, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Tel: (212) 849-7000  
Email: rickwerder@quinnemanuel.com